

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Pharma Base S.A.,

Plaintiff,

V.

HVL Inc. (a.k.a. H.V.L. Inc. and Douglas Laboratories) and Hi-Vidomin Laboratories, Inc.,

Defendants

Civil Action No. 06-_____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Pharma Base S.A. (“Pharma Base”), for its Complaint against Defendants HVL Inc. (“HVL”) and Hi-Vidomin Laboratories, Inc. (“Hi-Vidomin”), alleges the following:

THE PARTIES

1. Pharma Base is a corporation organized and existing under the laws of Switzerland, and has a principle place of business at Churerstrasse 166, CH-8808 Pfaffikon, Switzerland.

2. On information and belief, HVL is a corporation organized and existing under the laws of the state of Delaware, and has a principal place of business at 600 Boyce Road, Pittsburgh, Pennsylvania 15205, United States of America.

3. On information and belief, Hi-Vidomin is a corporation organized and existing under the laws of the state of Delaware, has a principal place of business at 300 Delaware Avenue, Wilmington, Delaware 19801, and is a wholly-owned subsidiary of and acts as a holding company for HVL.

JURISDICTION AND VENUE

4. This Court has jurisdiction pursuant to 15 U.S.C. §§ 1501 *et seq.* (“the Lanham Act”), and 28 U.S.C. §§ 1331, 1332(a), 1338(a) and/or 1367(a).

5. On information and belief, Defendants HVL and Hi-Vidomin, in addition to being citizens of Delaware, have been and are doing business in this District.

6. On information and belief, Defendant HVL has placed goods in the stream of commerce knowing that such goods likely would enter this District, and such goods have entered this District.

7. On information and belief, Defendant HVL has offered to sell and sold goods in this District and continues to offer to sell and sell goods in this District.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

NATURE AND CIRCUMSTANCES OF THE PARTIES’ DISPUTE

9. Plaintiff is a supplier of Coenzyme Q10 Fast Melting Tablets (the “Product”) that are marketed and sold under the trademarks COQMELT and QMELT in a variety of countries throughout the world.

10. Plaintiff is, and has been during all relevant periods of time, the owner of all rights, title and interests in and to the trademarks COQMELT and QMELT in the United States and Canada.

11. Defendant HVL is a distributor and retailer of nutritional supplements in the United States of America and Canada.

12. In late 2001, representatives of Plaintiff Pharma Base and Defendant HVL met with each other in Zurich, Switzerland to discuss bringing the Product to the United States and Canadian markets.

13. In late 2001 and early 2002, Plaintiff and Defendant HVL negotiated the terms of their commercial relationship, ultimately entering into an Exclusive Distributorship Agreement

and an Ownership and Licensing of Trademark Agreement (the "Distribution Agreement," the "Trademark Ownership and Licensing Agreement," collectively the "Agreements").

14. Under the Agreements, Defendant HVL was obliged to use certain efforts to market and sell the Product in the United States and Canada under Plaintiff's COQMELT mark.

15. On or about May 16, 2002, Defendants used Plaintiff's COQMELT mark for the first time to market and/or sell the Product to practitioners in the United States and Canada, and on information and belief, Defendants have continued to market and sell the Product to practitioners in the United States in Canada under Plaintiff's COQMELT mark from on or about May 16, 2002 to the present.

16. On or about August 2002, Plaintiff and Defendant HVL agreed that Defendant HVL would continue to market and sell the Product to practitioners in the United States and Canada using Plaintiff's COQMELT mark, that Defendant HVL would market and sell the Product to retailers in the United States and Canada under Plaintiff's QMELT mark, and that all such activities would be subject to the terms and provisions of the Agreements, the only exceptions being Defendant HVL's licensed use of COQMELT when marketing and selling to practitioners, and Defendant HVL's licensed use of QMELT when marketing and selling to retailers.

17. On or about December 4, 2002, Defendants used Plaintiff's QMELT mark for the first time to market and/or sell the Product to retailers in the United States and/or Canada, and on information and belief, Defendant's have continued to market and sell the Product to retailers in the United States and Canada under Plaintiff's QMELT mark from that date to the present.

18. Due to a series of disputes that arose between Plaintiff and Defendants, on or about April 25, 2006 Plaintiff terminated the Agreements with Defendant HVL and demanded that Defendant HVL immediately cease and desist from using Plaintiff's COQMELT and QMELT marks in any way (*see* Exhibit 1).

19. Upon information and belief, Defendants did not, and have not, ceased and desisted from using Plaintiff's COQMELT and QMELT marks in any way; instead, Defendants and those working in concert with Defendants have continued to use Plaintiff's COQMELT and

QMELT marks to market and sell the Product in direct violation of Plaintiff's legal and commercial rights and interests.

**COUNT I
(FEDERAL TRADEMARK INFRINGEMENT)**

20. Plaintiff repeats and re-alleges each of the preceding paragraphs in this Complaint.

21. Plaintiff's COQMELT and QMELT marks are distinctive for the Coenzyme Q10.

22. To the extent not inherently distinctive, Plaintiff's COQMELT and QMELT marks have acquired secondary meaning and significance in the minds of the consuming public for Coenzyme Q10

23. All public recognition and goodwill associated with Defendants use of Plaintiff's COQMELT and QMELT marks under the Agreements inured to the benefit of Plaintiff, and that goodwill and public recognition is a valuable asset of Plaintiff's business.

24. Plaintiff intends to preserve and maintain its rights with respect to its COQMELT and QMELT marks, and intends to continue using the marks in the United States.

25. As evidenced in Exhibits 2 and 3, upon information and belief, Defendants have continued to offer to sell and sell Coenzyme Q10 fast melting tablets under Plaintiff's COQMELT and QMELT marks.

26. On and information and belief, Defendants' continued use of the COQMELT and QMELT marks to offer to sell and sell Coenzyme Q10 fast melting tablets is intended to exploit the reputation and goodwill cultivated by Plaintiff such marks.

27. On information and belief, the COQMELT and QMELT marks that Defendants have continued to use since termination of the Agreements are identical to and confusingly similar with Plaintiff's COQMELT and QMELT marks (*see* Exhibits 2 and 3).

28. Defendants' deliberate activities are believed to have caused, and are likely to cause confusion, mistake, or deception, thereby causing great harm to the goodwill and public

recognition cultivated in the COQMELT and QMELT marks by Plaintiff and the diminution of the value of the COQMELT and QMELT marks.

29. Plaintiff has not given its consent, directly or indirectly, to Defendants to use the COQMELT and QMELT marks, or any marks similar thereto.

30. Defendants' activities constitute a) willful, deliberate and intentional infringement of Plaintiff's COQMELT and QMELT trademarks, in violation of the Lanham Act, to the substantial and irreparable injury of the public; and b) substantial and irreparable injury to the public recognition and goodwill cultivated by Plaintiff in its COQMELT and QMELT marks.

31. Upon information and belief, the willful, deliberate and intentional acts of infringement commenced, and have continued, in spite of the actual and constructive knowledge of Defendants that use of Plaintiff's COQMELT and QMELT marks after Plaintiff's April 25, 2006 cease and desist correspondence.

32. Plaintiff has no adequate remedy at law. Defendants' foregoing conduct has caused and will continue to cause, if not enjoined, irreparable damage to Plaintiff's rights in its COQMELT and QMELT marks and in Plaintiff's business, reputation and good will.

33. Plaintiff's damages from Defendants' unauthorized and unlawful activities, to the extent ascertainable, have not yet been determined.

WHEREFORE, Plaintiff requests:

(a) That the Court find Defendants have infringed Plaintiff's COQMELT and QMELT trademarks;

(b) That the Court find there is a substantial likelihood that Defendants will continue infringing Plaintiff's COQMELT and QMELT trademarks unless enjoined from doing so;

(c) That the Court preliminarily enjoin Defendants, their officers, directors, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, or under it, from infringing Plaintiff's COQMELT and QMELT trademarks, in any manner, or participating or assisting in any such activity;

(d) That the Court permanently enjoin Defendants, their officers, directors, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, or under it, from infringing Plaintiff's COQMELT and QMELT trademarks, in any manner, or participating or assisting in any such activity;

(e) That the Court award Plaintiff damages incurred as a result of Defendants' trademark infringement in an amount to be determined at trial, and that such damages be trebled;


(f) That the Court award Plaintiff its attorneys' fees, costs and expenses incurred in prosecution this action;

(g) That the Court require Defendants to recall and deliver to Plaintiff for destruction, at Defendants' expense all literature, brochures, quotes, packaging, labels, pamphlets, catalogs, and any other material bearing the COQMELT or QMELT trademarks, or any confusingly similar mark(s) thereto; and

(h) That the Court require Defendants to file with the Court, and to serve on Plaintiff, within thirty (30) days after entry of an Order as herein prayed, a written report, under oath, setting forth in detail the manner in which Defendants have complied with such Order.

Respectfully submitted,

Date: June 20, 2006


Patricia S. Rogowski (#2632)
Connolly Bove Lodge & Hutz LLP
1007 N. Orange St., P.O. Box 2207
Wilmington, DE 19899
(302) 658-5614

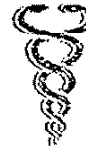
AND

John P. Donohue, Jr.
David L. Marcus
Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
(215) 568-3100

Attorneys for Plaintiff Pharma Base S.A.

1

PHARMA BASE S.A.



April 25, 2006

Mr. Douglas Lioon
CEO
HVL, Inc.
600 Boyce Road
Pittsburgh, PA 15205
USA

Mr. Richard Bordeleau
President – Health and Nutrition Division
Atrium Biotechnologies, Inc.
1405, Bld du Parc-Technologique
Quebec City, Quebec G1P 4P5
Canada

**Re: Exclusive Distributor Agreement and
Ownership and Licensing of Trademark Agreement**

Gentlemen:

It appears that our respective companies are not going to be able to reach an agreement regarding taking those steps necessary to correct the record ownership of the trademarks **COQMELT** and **QMELT** and taking those steps related to performance necessary to renew the distributor ship agreement.

It is clear from both the agreements and surrounding correspondence that Pharma Base was to be the record owner of the trademarks **COQMELT** and **QMELT**. Indeed, HVL's own actions blocked Pharma Base's ability to register these marks in the US. It is also clear that HVL will not, absent judicial intervention, transfer ownership to Pharma Base of U.S. Registration Nos. 2,733,259 and 2,803,702. The Atrium/HVL proposal that Pharma Base should now pay for the ownership rights agreed to over four years ago is refused.

Further, it is clear that HVL will not agree to reasonable minimum sales figures as required by Articles 10 and 14 of the distributor agreement in order to effectuate renewal of that agreement. Accordingly, the distributor agreement appears to have been terminated. Indeed, the agreement may have been terminated since February 1, 2005.

Since the Exclusive Distributorship Agreement has terminated, so has the agreement under which the trademarks were licensed. If HVL has not already done so, it is to immediately cease and desist from using the trademarks **COQMELT** and **QMELT** in any way.

Sincerely,

Harish Parekh

Chairman & President

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CoQmelt
Natural Coenzyme Q10 100 mg

Absorb Life Faster™

CoQmelt™
Natural Coenzyme Q10 100 mg

Supplement Facts
Serving Size 1 Fast-Melt Tablet
Serving Per Container 21

Amount Per Serving	
Natural Coenzyme Q10	100 mg*

*Daily value not established.

Other ingredients: mannitol, sorbitol, citric acid, vegetable stearate, natural orange flavor and povidone.

Suggested Usage: Adults take one tablet daily or as directed by physician. Place tablet on top of tongue and allow tablet to dissolve while gently pressing tongue against roof of mouth. Tablet will disintegrate in 1-2 minutes.**

**Not a sublingual tablet. Fast-Melt tablets are designed for their contents to be swallowed after tablet disintegrates.

This product contains NO yeast, wheat gluten, soy protein, milk/dairy, corn, sodium, sugar, starch, artificial coloring, preservatives or flavoring.

CoQmelt™ is formulated using patented Fast-Melt technology. This technology is designed to allow the tablet to begin dissolving immediately on contact with saliva. As the tablet melts the liquid is swallowed, facilitating an extremely rapid absorption of CoQ10 into the bloodstream. Research has shown that this patented technology increases the absorption of fat-soluble compounds like CoQ10 twice as fast as other dosage forms such as softgels, capsules, etc. The faster you take these delicious orange-flavored CoQmelt tablets, the faster CoQ10 will begin working for you.

KEEP OUT OF REACH OF CHILDREN. For optimal storage conditions, store in a cool, dry place. (59°-77°F/15°-25°C) (35-65% relative humidity). Tamper-resistant package; do not use if individual blister seals are broken.

Tablet technology protected under patent #6,149,938.

Exclusively by:
Douglas Laboratories
Pittsburgh, PA 15205 • www.douglaslabs.com

Formula #98555

Douglas Laboratories

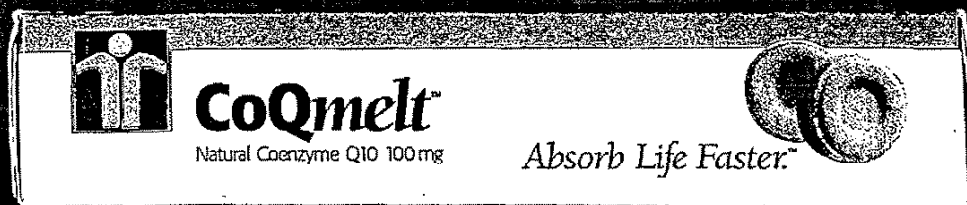
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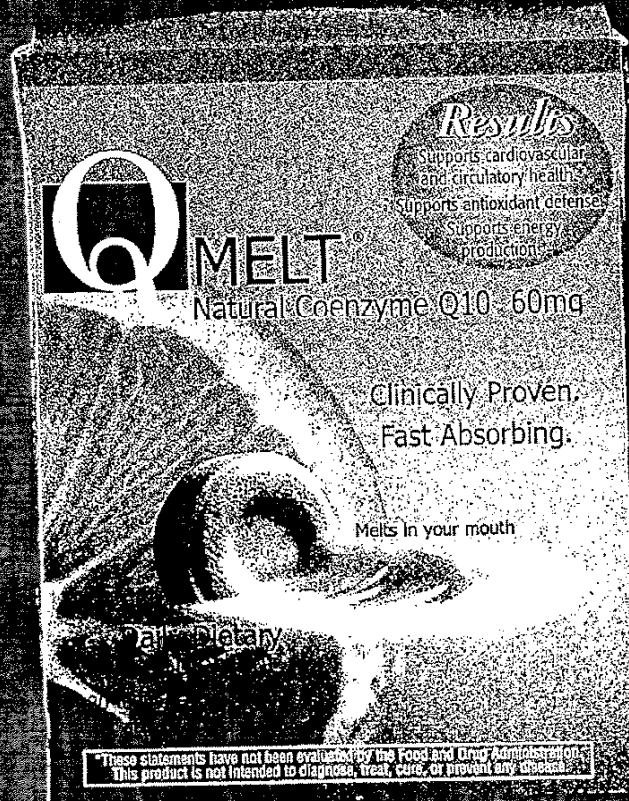
CoQmelt
Natural Coenzyme Q10 100mg

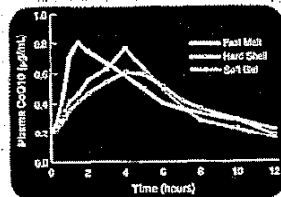


Absorb Life Faster.



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Similar to other intragastric formulations, Fast-Melt technology allows the drug to begin dissolving immediately upon ingestion, resulting in a rapid onset of drug action. The Fast-Melt technology, resulting in rapid onset of action, is the basis for the Fast-Melt technology. Clinical research has demonstrated that the Fast-Melt technology allows for a rapid onset of action, resulting in a rapid onset of action.

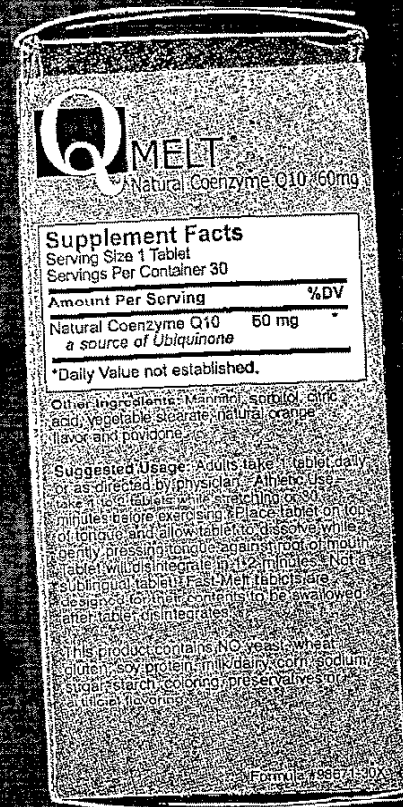
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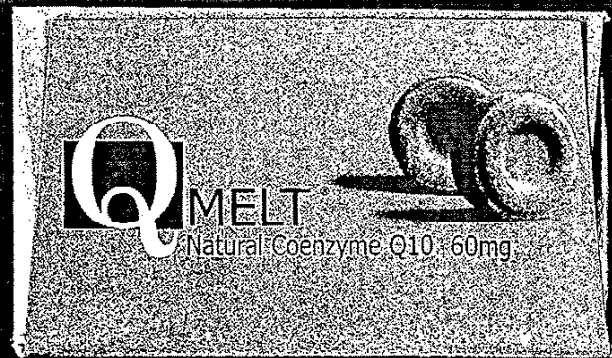
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*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.







JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PHARMA BASE S.A.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

PATRICIA SMINK ROGOWSKI, CONNOLLY BOVE
1007 N. ORANGE STREET, WILMINGTON, DE 19899

DEFENDANTS

HI-VIDOMIN LABS., INC.

HVL, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. 1501

Brief description of cause: TRADEMARK INFRINGEMENT

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE JUNE 20, 2006

SIGNATURE OF ATTORNEY OF RECORD

Patricia S. Rogowski
ID 2632

302-658-9141

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2006 JUN 20 AM 9:19

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 06 - 395

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 3 COPIES OF AO FORM 85.

JUN 20 2006

(Date forms issued)

Ricardo D. Mitchell

(Signature of Party or their Representative)

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action